IN THE

JOHN T. FEY, Clerk

Supreme Court of the United States

TERM A. D. 1957.

No. 517

HELEN AUGUSTA VOELKEL,
EDNA ELIZABETH PRATT,

Petitioners,

vs.

GEORGE E. TOHULKA,
CLARENCE A. TOHULKA,
KENNETH D. TOHULKA,
MARGUERITE A. HAY,

Respondents.

PETITIONERS' REPLY BRIEF.

MAURICE TULCHINSKY,
701 Odd Fellows Building,
South Bend, Indiana,

GEORGE SANDS,
617 Odd Fellows Building,
South Bend, Indiana,

ROGER F. GAY,
417 Odd Fellows Building,
South Bend, Indiana,

Attorneys for Petitioners.

INDEX.

		PAGE
I.	Cases cited by respondents which involve change of beneficiary rather than trust	2
II.	Cases cited by respondents under the law in effect prior to the National Service Insurance Act of 1940	3
III.	Particular provisions of such Act which preclude a trust	3
IV.	The case of Wissner v. Wissner as it applies to the interest of the United States	4
V.	The case of Wissner v. Wissner as it applies to the exclusion of a trust on insurance proceeds	6

CITATIONS

Burgess v. Murray (1952), 194 F. 2d 573	2
Heifner v. Soderstrom (1955), 134 F. Suppl. 174	5
Kaschefsky v. Kaschefsky (1940), 110 F. 2d 836	2
Tohulka v. United States (1953) 204 F. 2d 414	2
Wissner v. Wissner, (1950) 338 U.S. 655, 70 S. Ct. 398, 94 L. Ed. 424	5

STATUTES

Title 38, U.S.C.A., Sec. 802(i)	3

IN THE

Supreme Court of the United States

..... TERM A. D. 1957.

No. 517

HELEN AUGUSTA VOELKEL,
EDNA ELIZABETH PRATT,

Petitioners,

vs.

GEORGE E. TOHULKA,
CLARENCE A. TOHULKA,
KENNETH D. TOHULKA,
MARGUERITE A. HAY,

Respondents.

PETITIONERS' REPLY BRIEF.

The following is addressed to the respondents' brief and citations in support of same.

It will be noted that respondents have cited practically the same group of cases which appear in the decision of the Supreme Court of Indiana as Appendix "A" to the Petition for Writ of Certiorari.

I.

With reference to *Burgess* v. *Murray* (1952) 194 F. 2d 573, this case is discussed in the case of *Tohulka* v. *United States*, (1953) 204 F. 2d 414, at p. 416, where the court states as follows:

> "The decision turned upon whether the insured had made a valid change of the beneficiary and the court, having determined that question in the affirmative, rightfully concluded that it could proceed in accord with that change."

Likewise, in *Kaschefsky* v. *Kaschefsky* (1940) 110 F. 2d 836, this case was also explained in the foregoing case of *Tohulka* v. *United States*, at p. 416 of the opinion, where the court held as follows:

> "The court again, having found that there had been an express change of beneficiary, had jurisdiction over all conflicting claims."

So, while the foregoing cases involve a change of beneficiary, respondents, in their own Brief, state, at page 4, with reference to this action, as follows:

> "It is immediately clear no change of beneficiary is involved in this case."

II.

With regard to the other cases cited in respondents' brief, at pages 3 and 4, a study of these cases reveals that they were all decided prior to the National Service Life Insurance Act of 1940. The Supreme Court of Indiana states, in its opinion (6a), as follows:

> "There appears no impediment in the National Service Life Insurance Act of 1940, 38 U.S.C.A., 801, supra, directly opposing the imposition of a trust on funds after they are received by a beneficiary in the interest of a proper disposition of the proceeds in conformity with the wishes of a deceased soldier, if the facts exist which, under other principles of equity, would raise a trust."

The cases cited in support of the foregoing statement are those which, as above explained, arose prior to the Act of 1940. That this is an entirely new system of insurance; and that the proceeds of such a policy are not susceptible to having a trust imposed upon them, we direct attention to Title 38, U.S.C.A., Sec. 802 (i):

III.

> "No person shall have a vested right to any installment, or installments, of any such insurance."

and likewise, we call attention to this provision of the foregoing clause of the Act:

> "Any installments not paid to a beneficiary during such beneficiary's lifetime shall be paid to the beneficiary, or beneficiaries, within the permitted class next entitled to priority."

and likewise, it is provided in Clause (j) of said Title and Section, as follows:

"No installments of such insurance shall be paid to the heirs or legal representatives as such of the insured or of any beneficiaries."

The trial court has ordered the payments received by the designated beneficiary to be divided among her brothers and sisters. We made the observation in our original brief that if any of such other brothers and sisters should die, under the terms of the trial court's decision, which was sustained by the Supreme Court of Indiana, the heirs of such other brothers and sisters would take their share under a so called trust. Respondents have not attempted to answer this argument in their brief, because such a result would be completely contrary to the intent and purposes of the National Service Life Insurance Act.

The foregoing provisions are peculiarly true with reference to this Act and not the acts under which previous decisions cited by respondents was reached.

IV.

While respondents have argued that these provisions are solely for the benefit of the Government acting through the Veterans Administration, we feel that the real party attempted to be protected was the soldier, in that the beneficiary he designated cannot be changed, directly or indirectly, by parol evidence. The fact that the Government has specified groups and classes of beneficiaries certainly shows the purpose of the Act to be for the protection of veterans and their relatives within such groups.

In support of this, we cite the case of *Heifner* v. *Soderstrom* (1955) 134 F. Suppl. 174, which involved a dispute between the surviving wife and mother of a deceased veteran who held National Service Life Insurance and had at first designated his mother, then his wife, and, following estrangement with the wife, again changed the beneficiary to the mother. The parties being residents of different states, there was a diversity of citizenship and the Federal District Court recognized jurisdiction. Holding that what might be considered an implied agreement, from the fact that the wife had paid part of the premiums, to the effect that the beneficiary would not be changed, that no agreement on the part of the veteran would be effective, if made, to that effect; and holding further, that the decree of the divorce court awarding the wife insurance policies, including the one in question, could not prevail and prevent him from changing the beneficiary.

With reference to the interest which the United States Government might have in an action of this character, the language of the court, in explaining the case of *Wissner* v. *Wissner*, (1950) 338 U.S. 655, 70 S.C.T. 398, 94 L. Ed. 424, which was a decision of this court, the *Heifner* case states, at page 182, as follows:

> "The action of the United States Supreme Court in that case would seem to indicate that that court is of the view that what award a court makes of the proceeds of a National Service Life Insurance policy following their receipt by the designated beneficiary is a matter of Federal Government concern and this even though in the first instance federal district court jurisdiction might be lacking."

V.

In the above case cited, of *Wissner* v. *Wissner*, it is further stated, at 94 L. Ed. 429, as follows:

> "Further, Congress has provided in the National Service Life Insurance Act that the chosen beneficiary of the life insurance policy shall be during life, the sole owner of the proceeds."

If it is the law that the beneficiary under such a policy shall be during lifetime the sole owner of the proceeds, it is difficult to understand how a state court could hold that she holds such proceeds in trust for herself and other persons.

Respectfully submitted,

HELEN AUGUSTA VOELKEL,
EDNA ELIZABETH PRATT,
By: MAURICE TULCHINSKY,
701 Odd Fellows Building,
South Bend, Indiana,

GEORGE SANDS,
617 Odd Fellows Building,
South Bend, Indiana,

ROGER F. GAY,
417 Odd Fellows Building,
South Bend, Indiana,

Attorneys for Petitioners.